

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL APPLICATION NO. 3193 OF 1995

WITH

CIVIL APPLICATION NO. 3194 OF 1995

WITH

FIRST APPEAL No 2822 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

Hon'ble MR.JUSTICE N.N.MATHUR Sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ORIENTAL INSURANCE CO LTD .

Versus

MAHAJIBHAI M PATEL

Appearance:

MR DARSHAN M PARIKH for Petitioner

MS MEGHA JANI for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE N.N.MATHUR

Date of decision: 25/09/96

ORAL JUDGEMENT (Per Patel, J.)

1. The First Appeal is preferred by Insurance

Company against the judgment and award made by the Motor Accident Claims Tribunal (Aux.), Banaskantha at Palanpur in M.A.C.P. No. 65 of 1988. C.A. No. 3193/95 is for condonation of delay of 158 days (as noted by the Registry on the docket) in filing the appeal and C.A. No. 3194/95 is for stay.

2. From the record, it transpires that the appeal was presented on 27th July 1994. At the time of lodging the appeal, Court Fee stamp was not affixed on the memo of appeal as required but court fee stamp of Rs.5/- only was affixed, though it is categorically mentioned in the memo of appeal that the claim for court fee is Rs.1,35,000/-. It appears that the Registry examined the papers and referred the objections to the learned advocate on 21.11.1994 for removal of the objections, including that of non-payment of Court Fee, delay etc. The same were not removed, though they were required to be removed on or before 6.12.1994.

3. It appears that the learned advocate supplied necessary court fee only yesterday, i.e. 24th of September 1996 and affidavit in the delay condonation application was also affirmed only yesterday. Therefore, it appears that the Registry has taken cognizance of that application only on 24th September 1996 for circulation.

4. It is required to be noted that section 149 of the Civil Procedure Code empowers the Court to pass appropriate order if the Court fee is not paid in accordance with law. For payment of the Court Fee, the Court may pass appropriate order which would have the force and effect as if such fee had been paid in the first instance.

5. When an appeal is presented without proper Court Fee, in a case where claim is ascertained or is indicated, ordinarily, an application should have been made for extension of time for payment of Court Fee, and if the time is granted, then within that period, the Court Fee must be paid and that will have the effect as if the court fee is affixed or paid at the first instance.

6. The practice of the Registry in accepting the matter without proper court fee as a routine, is required to be deprecated. The law permits filing of an appeal only with proper court fee. However, in some unavoidable situation, if the court is required to be moved in the evening or on a holiday where it is not possible to have court fee, such an instance may be an exception but that

cannot be taken as a rule. Even in such a situation, an application is required to be made so that the Court may grant appropriate time for supplying the deficit court fee. When the lower Court delivers a judgment, the aggrieved party is aware about the steps to be taken. The law has prescribed a period of limitation, giving clear time for the purpose of taking a decision and for making necessary arrangements including that of court fee. Over and above, the time that may be taken by the office of the Court in preparing the certified copy of the judgment and decree under appeal is also available to the aggrieved party.

7. In the instant case, the appellant is the Insurance Company. We could have understood if the litigant is a poor person and is not in a position to arrange for the Court Fee, but the Insurance Companies and other Corporations/Companies not paying the court fees at the initial stage on the ground of inability to pay cannot be accepted and the practice of filing appeals without required court fee is required to be depreciated. Learned advocate states that in the instant case, the Insurance Company had forwarded the amount of court fee to him by a cheque on or about 14.11.1994. One thing is certain; The Court fee is paid only on 24th September 1996. Default as suggested on the part of the Clerk of the Advocate is a matter between the Insurance Company, its Advocate and his Clerk, for which this Court has nothing to do, more particularly when non-payment of deficit Court Fee is not explained by filing an affidavit of the person concerned, disclosing the circumstance in which he kept the Court Fee with him without disclosing the reason of non-payment. So far as this Court is concerned, the Court fee is paid only on 24th September 1996. If that be so, in the absence of any application submitted to the Court for extension of time for the purpose of paying court fee, can it be said that the appeal is lodged only when the court fee is paid? In a given situation, if an application is made under section 149 read with section 148 of the C.P.C. for payment of court fee and the application is granted, and Court Fee is paid as per order, then it can be said that the court fee is paid in the first instance because within the time allowed by the Court, the Court Fee is paid. In absence of any application, inspite of the fact that the Registry has drawn the attention of the learned Advocate in this behalf which is clear from the record of this Court, the Court Fee is not paid, then can it be said that the appeal is lodged on the date on which it has been filed?

8. Mrs. Mehta, learned Advocate intervened, stating

that the Advocates and litigants may suffer on account of the interpretation of the provisions, and drew our attention to Chapter V and XII of the Gujarat High Court Rules 1993 (hereinafter referred to as the Rules.)

9. Rule 40 of the Rules refers to showing and explaining the value of the claim in the memorandum of appeal or cross objections. Reading the rule, it is very clear that at the time of presentation of memorandum, one has to state how the valuation has been arrived at. Rule 41 requires that if there is difference in valuation in lower court and in the High Court, the same should be explained. The difference is required to be accounted for in the foot note in the memorandum of appeal at the time of the presentation of such memorandum and party or the advocate has to furnish all information and material necessary to explain the difference. It is in view of this provision in the memo of appeal filed, it is clearly mentioned the claim for the purpose of jurisdiction is Rs.2,50,000/- and the claim for the purpose of court fee is Rs.1,35,000/- separately. In case a party is exempted from the court fee, then as per rule 59, certificate is required to be produced as mentioned in the Rule. Thus, it is very clear that the memorandum of appeal when presented before the registry, it must indicate the amount of claim as understood by the appellant.

10. Rule 64 which is in chapter V of the Rules requires that the office need not make any inquiry when the court fee paid on an appeal is found to correspond with the court fee paid and accepted in the court below unless from the paper filed in the appeal or on account of any amendment of law relating to court fees, it appears that the court fee has not been correctly assessed on the appeal and that stamp of different amount is required to be affixed on the appeal. Reading this provisions, it is clear that one has to pay the court fee on the memorandum of appeal as per valuation stated as per Rules 40 or 41.

11. In the instant case, the memo of appeal also mentions "Claim for Court Fee : Rs.1,35,000/-" and "Claim for jurisdiction Rs.2,50,000/-." Thus, the appellant is aware as to what is the valuation in the appeal for the purpose of court fee. It is not a case that the appellant is unaware about the claim for court fee. The question of assessment at the stage of filing the appeal etc. will not arise as valuation for court fee is specifically stated, as required to be stated under the rules, and in such a case, the court fee on valuation must be paid at the initial stage. If on

examination by the Registry it is found that the court fee paid is deficit, then the question will arise of not affixing proper court fee but that will be of 'deficit' court fee and not of 'improper assessment' for the purpose of court fee. Improper assessment of court fee is different than deficit court fee. Registry, on examination, finds that the valuation required to be stated is not correctly stated, then question of 'assessment' will arise.

12. Under rule 65 of Chapter V it is the duty of the Office to examine the proceedings which are filed. The objection relates to the valuation of the claim in any memorandum of appeal or cross objections or in any application, or to the court fee to be paid thereon, any copy of a document presented therewith, the office shall state what in its opinion the correct valuation and what is the correct amount of court fee payable. If the valuation is made as per rule 40 and 41, the amount of court fee must be paid at the time of presentation of appeal as per valuation. However, provisions of sub-rule 2 of rule 65 will come into picture only if the correct valuation is not stated and correct court fee is not paid and Registry has to also give opinion as to what is the correct valuation. In the instant case, valuation as indicated by the learned advocate necessitates to pay the court fees as valued by him; However, if office, at a later point of time, on examination finds that the valuation which is indicated is not correct, then the question of giving reason or the opinion about the correct valuation and the correct amount of court fee payable would arise. Can it be said that the valuation is clearly mentioned in the memorandum of appeal and yet the court fee is to be paid as per convenience? Can it be contended that though valuation is disclosed by the appellant on the memorandum of application need not be accepted by him unless and until the same is approved by the Registry? In our opinion, the procedure under Rule 65 is required to be followed in a case where there is a bonafide dispute about the valuation. But, in case where valuation 'A' is disclosed in the memo of appeal the appellant must affix the court fees on valuation 'A' and it is only after the examination, if Registry calls upon him to pay the court fees other than what he has paid along with reasons, question of correctness of valuation by appellant would arise. If in view of the Registry a different court fee is required to be paid, then in that case, the advocate, if he accepts the correctness of the office objection regarding the court fee and valuation, then he has to remove the objection by paying court fee within time specified in Rule 65. When the court fee is

assessed and paid by the appellant is different than what is required to be paid, rule 69 will come into picture, and in case of failure to pay the difference, procedure prescribed in chapter XII will have to be followed.

13. Thus, this procedure is required to be followed in a case where the valuation disclosed on the memorandum of appeal or the cross objections as required to be disclosed under rule 40 or 41 is not acceptable to the Registry and the Registry is of the view that the valuation is not correctly made on the memorandum of appeal. But in case where the valuation is made correct or where the assessment is made according to the rules, the Court fee must be paid along with the memorandum of appeal or the cross objections or the application as the case may be as per valuation.

14. An Advocate is first an officer of the Court. Rules 40 and 41 cast duty on the learned advocate to ascertain the correct valuation according to his opinion. Considering the language used in these Rules, it is very clear that even reasons for valuation are required to be stated (i.e. claim restricted to a particular amount looking to the prayer), if valuation is different than the valuation made in the trial Court. The difference in valuation in lower court and in the High Court is required to be explained and has to furnish at the same time all information and material necessary to explain the difference. It is highly improper to lodge the memorandum of appeal or cross objection or application without following the procedure. It is on the requisite information supplied, Registry has to examine the valuation. It is the duty of the Advocate lodging the proceedings in the High Court to see that all Rules are complied with. As valuation is claimed by the advocate on the material available with him, he has to see that within the period of limitation, the court fee is paid as per valuation disclosed. It is always open for him to make a request for time to pay the court fee. Rules cannot be interpreted so as to defeat the provision. Only in case of a bonafide dispute about the claim, or the claim is not acceptable by the Registry, the procedure as contemplated in Rule 64 or 65 is to be followed.

15. Our attention is drawn to a reported decision of the Apex Court in the case of MOHAMMAD MAHIBULLA VS. SETH CHAMAN LAL reported in AIR 1993 SC 1241 and it is submitted that as memorandum of appeal was not sufficiently stamped, opportunity should be given to make

good the same and if without opportunity being given, the matter is dismissed, the same is improper. In the aforesaid case, there was exemption from payment of court fee at the trial stage, but at the appellate stage, learned District Judge arrived at a conclusion that the memorandum of appeal has not been sufficiently stamped and dismissed the appeal without giving an opportunity to make good the deficiency. It also appears that there was a bonafide dispute about the payment of court fee because at the trial stage, appellant was exempted and the appeal being a continuation of the trial, under the belief that court fee may not be required to be affixed, was not affixed. In the instant case, it is known to the appellant Insurance Company that court fee is required to be paid on a sum which is ascertained and which is specifically mentioned in the memo of appeal. Apart from that, Registry has drawn the attention of the learned Advocate that there is deficit of court fee, but only yesterday (24-09-96), the court fee is paid. The examination sheet indicates that the office objections were referred to the learned Advocate (according to the submissions made to the Assistant Registrar by the Section Officer) on 21.11.1994 for removing office objections noted therein on or before 6.12.1994. As stated by learned advocate, cheque for Court Fee was received by him before 21.11.1994. In spite of this, the Court Fee is not paid and it is paid only, as stated at the bar, when Executing Court is about to attach the property of the appellant, and this Court is moved in hot haste. Considering the provisions contained in the Civil Procedure Code, if the appeal or the application is presented with ascertained valuation without sufficient court fee, then under the provision of law, an application is required to be made for extension of time at that point of time and if within the time granted by the Registrar or Court, the court fee is paid, then as provided under section 149 of the CPC, it will have the same force and effect as if the court fee had been paid in the first instance; otherwise, the date of filing of the appeal or the application would be the date on which the court fee is paid, and if that be so, the delay is not of 158 days, but delay is till the date of filing of the appeal along with the court fee, i.e. 24.9.1996 and that period is required to be explained.

16. In the case of INDIAN STATESTATICAL INSTITUTE VS. M/S. ASSOCIATED BUILDERS reported in AIR 1978 SC 335, the Court considered section 149 of the Code of Civil Procedure which confers ample power on the High Court to exercise its powers in order to do justice to a litigant where the failure is not due to any fault of the

litigant. In the said case, the High Court was not inclined to exercise its discretion and condone the delay and to direct the payment of deficit court fee. The reasons given by the High Court are, (I). though Shri P. Sing may have acted without care or attention of interest of his client, or may have behaved recklessly, but nevertheless, as he was negligent, the conduct on the part of the counsel cannot be held as sufficient cause for condonation of delay; (II). the Court found that Shri Mukherjee, Counsel for the appellant, was unable to take any steps for filing the objections for setting aside the award before 21st January specially when the material for drafting objections were already available, either in court records or in the records of the appellant; (III). though it is not clear as to what time the Deputy Registrar gave for removing the objections and refiling, it was not done within a reasonable time. The apex Court came to the conclusion that the appellant was totally helpless and could not have refiled the memorandum of objections before 21st January 1977 in the circumstances in which he found himself and that the learned Judge did not even take notice of the facts that the petition for condonation of delay was pending and before that was disposed of, the memorandum of objections cannot be properly refiled. In the case before us, we are only emphasising that the court fee is required to be paid at the time of presentation of the appeal or the application as the case may be, unless there is a bonafide dispute. If the appeal is not properly stamped, the court has ample powers to extend the time for affixing proper court fee, and looking to the facts and circumstances of the case, the Court can always exercise its powers, in order to do justice to a litigant where the failure is not due to any fault of the litigant. We are only pointing out that in case the appeal is preferred and where the claim is ascertained, the court fee is required to be affixed ordinarily at the presentation of the appeal. We express this opinion for cases where valuation is made in accordance with Rules 40 and 41. Appellant cannot say that he shall pay the court fee at his convenience or at the time of his choice so as to select one or the other Court.

17. The view which we have expressed above is supported by the view taken by the Full Bench of the Kerala High Court in the case of KATHAYEE COTTON MILLS vs. R.P. PILLAI reported in AIR 1958 KERALA 88. The relevant portion is quoted below :

"The practice of filing memoranda of appeal immediately prior to the end of the period of

limitation bearing a court fee which is known to be insufficient has been severely condemned in a number of cases In *Brijbukhan v. Tota Ram*. ILR 50 ALL 980 : (AIR 1929 All 75 (G), Sulaiman, J. as he then was of opinion that such an attempt to get round the provisions of the Court-Fees Act should not be tolerated. With great respect, I agree with that opinion. The great weight of authority is in favour of the view that the Court has, under S.149 of the Code, a full discretion in the matter ... The cases will be found in ILR 50 All 980 : (AIR 1929 All 75 (G), and *Jnanadasundari v. Madhabchandra*, ILR 59 CAL 388 : (AIR 1932 Cal. 482) (H) and that discretion should, in my opinion, only be exercised where the court is satisfied that sufficient grounds exist for the full court-fee not having been paid in the first instance, for the effect of extending the time as to deprive the respondent of the right which otherwise arises from the fact that an appeal not filed in due time with the proper court-fee is barred. The inability of the appellant to find the requisite money is not, in my opinion, save perhaps in very special circumstances as, for example, where he has been robbed, sufficient ground for extending the period for payment".

18. In the case of *BUTA SINGH VS. UNION OF INDIA* reported in 1995 (5) SCC pg. 284, the Apex Court considered the question of exercising discretion under section 149 of the Civil Procedure Code.

In paragraph 9 of the aforesaid judgment, the Apex Court has held that it is true that section 149 CPC gives powers to the Court to give time to the appellant to make up deficiency of court fee when the whole or any part of the fee prescribed under the Court Fees Act to pay Court Fee on the memorandum of appeal (MOA) but had not been paid while presenting the same; but the power of the court is one of discretion and not as of right. Generally, before the appeal is admitted under Order 41 Rule 9, the Court would exercise the discretion on showing sufficient cause for not making the required fee on the MOA. The discretion conferred on the Court by section 149 is a judicial discretion. The Court is not bound to exercise the discretion unless the applicant shows sufficient cause for the failure to pay deficit court fee or he was under bonafide mistake in payment thereof. Mere poverty or ignorance or inability to pay

the Court Fee at the time of presenting the appeal is not always a good ground for indulgence under section 149. Bonafide mistake on the part of the appellant or the applicant in making the deficit court fee may be a ground to exercise discretion in favour of the appellant. It is the duty of the Registry before admitting the appeal to point out to the appellant or his counsel that the deficit court fee is payable on MOA and some reasonable time may be given for payment of the court fee. The MOA would be returned to do the needful. If the deficit court fee is not made up and presented within the time enlarged under section 148 CPC, there would be no appeal in the eye of law unless the delay is condoned; If the party deliberately to suit convenience paid insufficient court fee, the mistake is not a bonafide but one of choice made by a party in making the deficit court fee. In that situation, even after pointing out the need to make the court fee and given time, if the Court Fee is not paid and MOA is represented within the enlarged time, it would be open to the Court either to reject the MOA or refuse to condone the delay for not showing sufficient cause thereon. Therefore, the Court is required to exercise its judicial discretion, keeping the facts and circumstances in each case in mind, and not automatically for mere asking the indulgence be shown to the parties to make good the deficit court fee. In the later event, it is not exercise of the judicial discretion but showing undue indulgence.

19. Keeping in mind the principle laid down by the Supreme Court in the aforesaid case, it is clear that in the instant case, though it was within the knowledge of the appellant that he is required to pay the court fee on the valuation which is ascertained at Rs.1,35,000/-, has not paid the court fee but has affixed the Court Fee of Rs.5/- only and inspite of the fact that the office pointed out the learned advocate to pay the deficit court fee, the court fee is not paid. That is indicative of a case of convenience. It is not open to pay the court fee as per convenience of the parties or the convenience of the Advocate or that of the Clerk.

In view of the aforesaid judgment of the Apex Court, the appeal or Cross Objections or application presented with proper court fee is to be admitted and registered in the Register of Appeals or Applications or Cross Objections as the case may be, and not otherwise. Registry must comply with this, failing which, the Court may take action against the person concerned.

20. Powers under section 149 can be exercised by the

Court at any stage. In a given case, even if application is not made along with the memo of appeal seeking time for payment of court fee, the Court to do the complete justice may exercise the powers under section 149 of the C.P.C. and in accordance with the order passed by the Court, if the Court fee is paid, it will have the same force and effect as if it is paid at the first instance. It is not because of payment of court fee, but it is because of exercise of judicial discretion vested in the court which has permitted the defaulter to pay the court fee. In the present case, in absence of payment of court fee as per valuation, as the claim is ascertained and there is no bonafide mistake in calculation or there is no bonafide dispute about the court fee payable, in absence of order passed by the Court deferring the payment of court fee, as the court fee is paid after expiry of limitation, without the orders of the Court, the same is deemed to be time barred. In the instant case, the appeal is otherwise also time barred.

21. In the case of MANNAN LAL vs. CHHOTKA BIBI reported in AIR 1971 SC 1374 at page 1379 (in paragraph 11), the question of insufficiently stamped memo etc. came to be considered. Apex Court also referred to Section 582 A of CPC of 1882 which reads as under :-

If a memorandum of appeal or application for a review of judgment has been presented within the period of limitation, but is written upon paper insufficiently stamped, and the insufficiency of the Stamp was caused by a mistake on the part of the appellant or applicant as to the amount of the requisite stamp, the memorandum of appeal or application shall have the same effect and be as valid as if it had been properly stamped:

Provided that such appeal or application shall be rejected unless the appellant or applicant supplies the requisite stamp within a reasonable time after the discovery of the mistake to be fixed by the Court."

Section 149 of the CPC, 1908 for the sake of convenience, we reproduce herebelow :-

Where the whole or any part of any fee prescribed for any document paid, the Court may, in its discretion, at any stage, allow the person, by whom, such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and

upon such payment the document in respect of which such fee is payable shall have the same force and effect as if such fee had been paid in the first instance.

In the Act of 1882 the insufficiency of stamp if caused on account of mistake on the part of the advocate or applicant, its effect is considered.

22. It is contended that even if the court fee affixed may be insufficient, though it was within the knowledge of the appellant as to what is the ascertained amount and what is the court fee payable, the court must wait till the appellant pays the court fee. For harmonious construction of the provisions contained in the Civil Procedure Code and the Court Fee Act, considering the aforesaid decision of the apex Court in the case of BUTASING (Supra), in a given case, the court may exercise the powers and may permit the petitioner or the appellant to pay the court fee within the stipulated period and if that is paid, it will have the effect as if the court fee is paid at the first instance and the appellant will not suffer.

23. Before appeal is admitted and registered in Register of Appeals, Court Fee should be paid. Poverty, ignorance or inability to pay Court Fee payable at the time of presenting an appeal is not always a good ground for indulgence u/s 149 of the C.P.C. If there is a sufficient cause for failure to pay deficit Court Fee or a bonafide dispute about the court fee payable, Court should exercise powers under section 149 of the CPC before the appeal is registered under Order 41 Rule 9. But, if on admitted facts, and as stated in the memorandum of appeal valuation for Court Fee is ascertained, it cannot be said that the court fee can be paid at any point of time and even after the period of limitation expires. Court Fee should be paid as per Valuation while presenting the appeal. Therefore, in a case where the amount is ascertained and if the court fee which is required to be affixed is not affixed, then in that situation it would be for the appellant or the applicant as the case may be, to submit an application to the Registrar or the Court for extension of time and within that period, if the Court fee is paid, it would be deemed to have been paid at the time of presentation of appeal.

24. In the case of MAHANT RAM DAS vs. GANGA DAS (1961 SCD 264), Apex Court held that Secs. 148, 149 and

151 of CPC, 1908 clothed the High Court with ample power to do justice to a litigant if sufficient cause was made for extension. The Court also pointed out that these sections could be invoked by the applicant when the time had not actually expired. The Apex Court pointed out that such procedural orders, though peremptory are in essence in terrorem, so that dilatory litigants might put themselves in order and avoid delay. In our opinion, for enforcing prompt obedience and avoidance of delay, Court must enforce discipline so as to see that disadvantage is not taken. It is also the duty of the Court to see that the opponent who is not present may not suffer. By filing an appeal, even tribunal/trial court is requested not to proceed with the execution proceedings on the ground that the appeal is pending, and for a pretty long time, proceedings are kept pending in two different forums. In the instant case, court is urgently moved after a pretty long time as Executing Court, in the absence of stay, is likely to pass an order of attachment of property of the Insurance Company (the appellant). The opponents filed claim petition on 10.10.1988 as in a vehicular accident, the original applicant, on 2.7.88 sustained injuries which resulted in permanent disablement. The award is made on 8.10.1993. Appellant filed the present appeal on 27.7.1994 and thereafter appellant has not taken any steps, but moved the court for urgent orders for reasons stated earlier. In such a case, we do not think that powers should be exercised.

25. In the absence of bonafide dispute or improper assessment or sufficient cause for non-payment of Court Fee, the contentions are without any merit. In view of the decisions referred above, it is clear that the appeal should be presented with Court Fee as per valuation. In case of sufficient cause for non-payment, application should be given under section 148/149 of CPC and if granted within the time allowed, court fee must be paid. Appeals are lying in the Registry for number of months as Court Fee is not paid. Chapter V and XII of the High Court Rules will apply only in a case where there is a bonafide dispute for the court fee to be paid and not otherwise. The Registry should henceforth strictly apply the principles laid down in this case.

(26. In the delay condonation application, it is stated that no action was taken for filing the appeal as the learned advocate who conducted the matter, by letter dated 8.12.1993, gave opinion that it is not a fit case to prefer an appeal. It is stated in the application that since the award amount was beyond the sanctioning power of the concerned officer (no name or designation is

mentioned), the file was forwarded to the Regional Office and the papers reached the Regional Office somewhere in April 1994. If the opinion is given on 8th December 1993, for the reasons best known to the appellant, papers were not forwarded till later part of April 1994. It is at that stage that the Regional office desired for the opinion of an advocate practising in the High Court, (when, not stated) who gave an opinion on or about 15th May 1994 in the matter and accordingly this appeal has been preferred on 27th July 1994. We do not find this to be an explanation, much less to be a 'satisfactory explanation'. The copy of the judgment was ready on 24.11.1993. Attending advocate forwarded the opinion on 8.12.1993. We do not know what action has been taken against the erring officer for detaining the papers with him till April 1994. It is not a case of fraud or negligence of that officer and in absence of action, it is rightly not pleaded. The papers have been forwarded in April 1994 and there also, a decision is taken on 15th May 1994 to have opinion of another advocate. If the Law Officer was on leave, it makes no difference because decision was taken to have opinion of another Advocate. In our view, the explanation of delay is insufficient.

27. In any case, with a view to see that if there is any merit in the matter the litigant may not suffer, we also heard learned advocate Mr. Parikh on merits, who raised three contentions:-

28. The first contention is that there is a collusion between the claimant and the driver and owner of the motor vehicle. We put a pointed question in the absence of any discussion on this point in the award, whether any ground is raised in the appeal that though the point was raised before the Tribunal, the Tribunal has not considered the same? Learned advocate fairly stated that such a specific contention is not raised in the appeal. If such a point was not raised before the Tribunal, then it is a futile attempt to canvass before this Court that before the Tribunal the question was raised but not considered.

29. The second contention is that there is variance in the deposition of the witness who took the injured to the hospital. He has stated at the initial stage that the accident was caused by a Maruti car. Learned Advocate submitted that the accident was caused by a Fiat car. Learned advocate read the cross examination. There is no specific question as to the make of the car which caused the accident but the witness has merely replied to a leading question that the accident was caused due to

the accidental opening of the door of the Maruti car. We have to bear in mind that the witness is a milk vendor who may be aware about the brands and makes of bicycles but not of variety of motor cars. Moreover, the accident took place on 2.7.88 and the deposition is recorded on 17.3.93 and 12.8.93. There is a gap of nearly five years and no importance can be attached to the variance in the make of the car, as canvassed by the learned advocate.

30. The third and the last contention raised by the learned advocate is that the Tribunal erred in applying a multiplier of 12. We have considered this aspect also. It is required to be noted that the injured was bed-ridden for more than three and a half years. Looking to the earning, the overall compensation awarded is just and proper, and we would not like to interfere with the same in the peculiar facts and circumstances of this case.)

31. Under the circumstances, the application for condonation of delay is rejected. Resultantly, the appeal stands rejected not only on account of noncondonation of delay but also as timebarred. We are also rejecting the appeal on merits.

(32. Rs.25,000/- deposited with this Court is ordered to be transmitted to the Tribunal. Mr. Parikh requests for time to deposit the remaining amount and two weeks time is granted to deposit the amount with the Tribunal.

33. In view of the aforesaid orders, no orders on the Civil Application for stay.)

csm./